

**Speech-Language Pathology and Audiology Board**

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**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD
Department of Consumer Affairs
Medical Board of California
1424 Howe Avenue
Greg Gorges Conference Room "F"
Sacramento, CA 95825
March 8, 2002
MINUTES**

Members Present

Alison Grimes, M.A.
Sherry Washington, M.A.
Rebecca Binge, M.A.
James Till, Ph.D.
Marcia Raggio, Ph.D.
Bruce Gerratt, Ph.D.
Paul Donald, M.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Candace Raney, Staff Analyst
Lori Garrett, Staff Analyst
George Ritter, Staff Counsel

Guests Present

Robert Powell, California Speech-Language Hearing Association
Meg Gilhooly, California Rehabilitation Association
Lisa O'Connor, California Speech-Language Hearing Association
Rebecca Leonard, UC Davis
Susan Langmore, California Speech-Language Hearing Association
Carol Runge, Department of Consumer Affairs, Legislative and Regulatory Review Unit
Al Parker, Department of Consumer Affairs, Division of Investigation
Morgan Zeitler, Department of Consumer Affairs, Division of Investigation

I. Call to Order

Chairperson Grimes called the meeting to order at 10:10 a.m.

II. Roll Call

A quorum of the Board was established.

III. Introductions

Those present introduced themselves.

A. Approval of January 10 – 11, 2002 Committee Meeting Minutes and January 11, 2002 Board Meeting Minutes

The Board discussed minor grammatical edits to the minutes.

M/S/C: Donald/Bingea

The Board approved the January 10, 2002 Sunset Review Committee Meeting minutes and the January 11, 2002 Speech-Language Pathology Scope of Practice Committee Meeting minutes and the Board Meeting minutes as amended.

IV. Legislation

A. SB 1379 – (Speech-Language Pathologists; Endoscopies)

Mr. Powell stated that the fact sheet provided by the California Speech-Language Hearing Association relative to SB 1379 prepared as a source of general information for legislative staff, was prepared by himself as a non-expert. He invited the Board to provide suggested amendments to the fact sheet.

Ms. Del Mugnaio stated that SB 1379 as presented is likely to be amended during the course of the legislative process.

Ms. Del Mugnaio stated that there are a number of issues that need to be addressed by the Board relative to endoscopy including: standardized training, established competencies, and which entity would be responsible for establishing or ensuring that training is obtained and/or competencies are met. Another important factor for Board consideration is the medical setting where endoscopy is performed and the availability of emergency medical response.

Ms. Del Mugnaio stated that the legislature may be interested in the availability of statewide training programs specific to endoscopy. She explained that she is not aware of any such program currently available. She stated that the legislature will not be inclined to introduce a law that is isolated to a few individuals.

Mr. Donald explained that he has conferred with many colleagues currently serving as directors of training programs and the consensus among these individuals is that endoscopy should not be performed by every speech-language pathologist.

Mr. Donald suggested that the training of speech-language pathologists to perform endoscopy should be pursued on a preceptorship basis and recommended that the Board issue a certificate to individuals who obtain the additional training in endoscopic procedures.

Mr. Donald expressed concern regarding the lack of legal protection for speech-language pathologists performing endoscopy. He also expressed concern regarding speech-language pathologists performing endoscopy in non-hospital settings where a medical professional is not readily available.

Ms. Del Mugnaio stated that language in the law should state that speech-language pathologists performing endoscopy are doing so in a setting that has established competencies.

Ms. Del Mugnaio expressed concern regarding the Board oversight and implementation responsibility of establishing such a certification or training program given the Board's limited fiscal resources.

Ms. Leonard stated that she envisions establishment of a preceptorship program to be very similar to the Board's Continuing Professional Development program.

Ms. Leonard suggested that fiscal considerations be included in the language of SB 1379.

Mr. Till suggested that the establishment of a task force might be possible to provide oversight necessary to ensure consumer protection.

Mr. Donald stated that he views this situation as two-fold in that there are two main issues to be addressed: first, the proficiency of the speech-language pathologist and secondly, the setting in which the procedure is performed.

Ms. Langmore stated that she would like to see the Board establish a program that would ensure competency and would also allow the speech-language pathologist to perform endoscopy in nursing homes because of the number of residents in need of the procedure in that setting.

Ms. Del Mugnaio reiterated that there are many different issues to consider relative to endoscopy, including but not limited to: the educational basis, technical knowledge as well as competency in performing the procedure itself, the development of training programs, and regulatory oversight. The Board must also consider the possible number of speech-language pathologists that would be interested in obtaining the necessary certification, approval, etc. to perform endoscopy.

Ms. Del Mugnaio stated that if the language of this legislation is drafted to be very specific, all of the concerns and/or issues could be addressed as part of that legislation as well as satisfy potential concerns of other interested parties.

Ms. Washington expressed concern regarding the Board placing too many restrictions or requirements that must then be monitored to ensure compliance and stated that if the Board were to pursue the avenue of a preceptorship involving a Board-certified otolaryngologist, it must place some confidence in the otolaryngologist to provide training and ensure that the speech-language pathologist is competent to perform endoscopy.

Ms. O'Connor prepared and provided draft amendments to SB 1379 for the Board's review.

M/S/C: Donald/Raggio

The Board voted to approve the draft legislative language as provided by Ms. O'Connor with minor amendments.

Mr. Powell requested that the Board consider cosponsoring the legislation as proposed.

The Board discussed the request and expressed concern regarding cosponsoring legislation that expands a speech-language pathologist's scope of practice as it may be considered an inappropriate role for the Board. The Board determined that co-sponsorship may pose a conflict in the future and therefore would instead express its support of the proposed legislation.

B. AB 1480 / AB 1914 (Medi-Cal – Hearing Aid Coverage)

Ms. Del Mugnaio stated that AB 1480 was essentially a bill that provided for hearing evaluation reimbursement under the Welfare and Institutions Code. AB 1480 died and was replaced with AB 1914.

Ms. Del Mugnaio provided the Board with a replacement package for this section of the Board packet with reorganized and updated information.

Ms. Del Mugnaio explained that AB 1914 is sponsored by Hearing Healthcare Providers. The differences between AB 1480 and AB 1914 are that the word “otolaryngologist” was reinserted into the law and AB 1914 includes a provision that states that the first practitioner to submit a bill to Medi-Cal will receive reimbursement, regardless of who the practitioner is.

Ms. Del Mugnaio stated that if the Board votes to oppose the bill, an amendment to the Board’s opposition letter submitted for AB 1480 could be submitted to oppose AB 1914.

Ms. Bingea agreed to review AB 1914 and amend the Board’s opposition letter to AB 1480 for submission in this matter.

M/S/C: Bingea/Donald

The Board voted to oppose AB 1914.

C. SB 1402 – Occupational Therapy

Ms. Del Mugnaio explained that SB 1402 moves hand therapy out of the occupational therapists general practice provision and makes it a specialty area of practice.

Ms. Del Mugnaio stated that the Board is not required to take a position on this bill unless there are specific concerns.

D. Any Other Legislation of Interest to the Board

SB 1638 – Healthcare Coverage for Hearing Aids

Ms. Del Mugnaio stated that SB 1638 provides for coverage of hearing aids by health care plans.

Mr. Powell explained that George Washington School for the Deaf and Hard of Hearing, under the Burbank Unified School District, has been unable to acquire hearing aids for a two-year old student. The original intent of this bill is to have health maintenance organizations offer plans that include hearing aid benefits with an increase in plan cost. As introduced, the bill mandated health plans to offer this benefit.

Mr. Powell stated that he anticipates that this bill will face significant opposition as employers are already having trouble providing health insurance to employees due to increasing insurance premiums.

Ms. Grimes stated that this is an issue that absolutely needs to be addressed because 85% of managed care plans do not offer hearing aids as a covered benefit and the need for hearing aids in the 0-3 year-old patient population is increasing partly due to the effectiveness of the Newborn Hearing Screening Program.

The Board delegated this matter to Ms. Del Mugnaio to track SB 1638 and provide an update at the next Board meeting.

SB 2021 – Department of Consumer Affairs Omnibus

Ms. Del Mugnaio stated that this bill is the Department of Consumer Affairs' Omnibus bill. This bill includes a provision that eliminates the reference to the Speech-Language Pathology and Audiology Board as an entity under the jurisdiction of the Medical Board and places the Board as an agency within the Department of Consumer Affairs.

Ms. Del Mugnaio also explained that this bill establishes a fee for the issuance of licensing and history certification letters by the Board.

M/S/C: Bingea/Raggio

The Board voted to support SB 2021 and delegated to Ms. Del Mugnaio the task of drafting and submitting a letter of support.

V. Adoption of Proposed Regulations – Required Professional Experience (RPE) Reissuance of RPE Temporary License

Ms. Del Mugnaio explained that the language of the proposed regulations has been amended by legal counsel to provide clarity to acceptable terms for reissuing a temporary license. The amendments enable the Board to consider various circumstances that may occur which would prevent the RPE applicant from completing the experience. She requested that the Board review the amended language.

M/S/C: Donald/Till

The Board voted to adopt the proposed language of the Required Professional Experience Reissuance of RPE Temporary License as amended.

VI. Report on Case Review Regarding Violation of Business and Professions Code Section 650 – Unlawful Referrals (Legal Counsel, George Ritter)

Ms. Del Mugnaio explained that at the Board's public hearing held in Los Angeles on January 10, 2002, a consumer/licensee expressed concern regarding an alleged on-going business practice between providers of audiological services and health care organizations whereby individuals enrolled in health care plans who are referred for hearing aids are offered free audiological services or hearing examinations.

The Board requested that legal counsel, George Ritter, review a prior enforcement case relative to this issue and provide a legal analysis.

Mr. Ritter conducted a review of the matter and determined that if an HMO had an obligation to provide audiological services to its enrollees and which also agreed to make referrals to a licensee who offered to provide these services free of charge, then this could constitute a violation of Business and Professions Code Section 650.

Ms. Del Mugnaio stated that there are currently two bills in the legislative process relative to this issue. SB 2010 is currently a spot bill that will be amended to include specific language relative to referrals. SB 1907 provides for an exclusion to the prohibition of B&P Code Section 650 in that a personal service agreement between a licensee and a recipient of a referral would be lawful if the arrangement meets certain requirements.

Ms. Del Mugnaio stated that she has contacted the Senate Business and Professions Committee regarding this issue. She explained that this issue is long standing and is not specific to this Board. Bill Gage, of the Committee, informed Ms. Del Mugnaio that Chair Senator Liz Figueroa sent a request to the AG's Office in late February to issue a legal opinion regarding this matter. The general consensus of the Business and Professions Committee is that legislation may be necessary to remedy this situation. Ms. Del Mugnaio stated that the Business and Professions Committee has agreed to keep this Board apprised as to the interaction with the Office of the Attorney General.

Ms. Del Mugnaio explained that resolution to this matter will require collaboration between the Board(s), the Legislature and the Office of the Attorney General

Ms. Del Mugnaio recommended that the Board provide a status report to the consumer/licensee that brought this issue to the Board at the January public hearing.

M/S/C: Raggio/Bingea

The Board voted to delegate this matter to the Executive Officer and Legal Counsel to provide a status report to the consumer/licensee as recommended and to confer with the Office of the Attorney General regarding the legal opinion rendered by Mr. Ritter.

VII. Discussion of Sunset Review Report Topics and Assignments

Ms. Del Mugnaio stated that the Legislature has postponed the Board's Sunset Review by the Joint Legislative Sunset Review Committee for one year.

Ms. Del Mugnaio encouraged the Board members to continue to work on their assignments as well as compile additional information and seek resources that may assist in the development of the Board's Sunset Review Report.

Ms. Del Mugnaio stated that Board staff is in the process of preparing transcripts of the public testimony from each of the public hearings held in October 2001 and January 2002. Upon completion, a general statement addressing all concerns raised will be disseminated to the participants. This statement will include a copy of the transcripts.

Ms. Del Mugnaio stated that one of the issues brought before the Board at the Sunset Review public hearings in January 2002 was intraoperative monitoring. She explained that she has addressed this concern in writing to the individual that presented testimony regarding this issue. She also stated that she would contact the National Council of State Boards of Examiners in Speech-Language Pathology and Audiology to determine if other states have addressed this issue.

Ms. Del Mugnaio reviewed the issues previously addressed as possible topics for review during the Sunset Review process. She reported that many of these issues are already in the process of being addressed by the Board, and some are no longer issues to be addressed.

VIII. Public Comment on Items Not on the Agenda

There were no additional public comments.

IX. Announcements

Next Board Meeting is May 2002

The Audiology Committee will hold a meeting in Sacramento on the morning of May 10, 2002 and the meeting of the full Board will immediately follow.

Ms. Del Mugnaio requested that each of the Board members remember to file a Form 700 on or before April 1, 2002.

X. Closed Session (pursuant to Government Code Subsections 11126(c)(3) - Proposed Decisions/Stipulations/ Other APA Enforcement Actions

The Board did not convene in closed session, as there were no matters to be discussed.

XII. Open Session/ Adjournment

Chairperson Grimes adjourned the meeting at 2:56 p.m.

Annemarie Del Mugnaio, Executive Officer